WEXPRO CO.

IBLA 91-405 Decided February 12, 1998

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming an Order of the Rock Springs District Office, Bureau of Land Management, to revise the South Baxter Basin Unit 1991 Plan of Development to include drilling outside the existing participating areas. SDR No. WY-91-07.

Set aside and remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Unit and Cooperative Agreements

   Under authority of the Act of Aug. 21, 1935, 49 Stat. 674, the Department may control the rate of development of oil and gas resources within an oil and gas lease unit by enforcing the terms of the governing unit agreement. Where the unit agreement provides the Department ample authority to alter the rate of prospecting and development and the quantity and rate of production; where the unit agreement acknowledges a "power and duty" to enlarge any gas participating area and to create any new gas participating areas; and where the Unit Operating Agreement expressly refers to contraction of the unit as an alternative to the drilling of wells required by an authorized representative of the Department, BLM has the authority to require drilling wells within the unit but outside the established participating areas to further define the productive limits of gas or oil horizons within the unit, on pain of contraction of the unit. However, such decision will be set aside and remanded to allow an opportunity to demonstrate that exploratory wells would not be economic and that the required action would violate the terms of the unit agreement or unit operating agreement.

APPEARANCES: Thomas C. Jepperson, Esq., and Margaret Kennedy Gentles, Esq., Wexpro Company, Salt Lake City, Utah, for Appellant; John R. Kunz, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Wexpro Company has appealed from the May 6, 1991, Decision of the Wyoming State Office, Bureau of Land Management (BLM or the Bureau), affirming an Order of the Rock Springs District Office (RSDO), BLM, that the South Baxter Basin (SBB) Unit 1991 Plan of Development (POD) be revised to include drilling outside the existing participating areas (PA's).

The SBB Unit was formed with the execution of the SBB Unit Agreement on April 10, 1942, and its subsequent approval by the Department on October 27, 1942. (Statement of Reasons (SOR) at 1.) 1/ The working interest owners subsequently executed the SBB Unit Operating Agreement, dated July 1, 1964. (SOR at 1-2.) These two documents are at the center of the present dispute.

The SBB Unit Agreement established five gas PA's, which have remained largely unchanged since the SBB Unit's inception, to produce natural gas from the Frontier and the Dakota formations. Wexpro explains that the 1942 SBB Unit Agreement "is somewhat unique in that it establishes the boundaries of the participating areas in the contract." See SOR at 2 (citations omitted).

To comply with section 8 of the SBB Unit Agreement, Wexpro, as Unit operator, submitted to BLM a POD dated March 25, 1991. On March 29, 1991, RSDO wrote Wexpro as follows:

> In your letter to this office dated August 1, 1989, you indicated that Wexpro was reviewing the geology and plans for the South Baxter Basin Unit; and that such plans would be reflected in the 1990 Plan of Development (POD). The 1990 POD was mute to any additional exploration or development, as is your proposed 1991 Plan of Development.

1/ A unit agreement is a contract between participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved; it is essentially a contract between private parties, approved by the Department when Federal mineral estates are present, setting forth the rights and liabilities of the parties to the agreement. Orvin Froholm, 132 IBLA 301, 305 (1995). A unit agreement submitted to BLM "shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources." 43 C.F.R. § 3183.4(a).

The SBB Unit contains 38,769.69 acres stretching northeasterly from sec. 1 of T. 15 N., R. 105 W., to sec. 33 of T. 18 N., R. 103 W., Sixth Principal Meridian, Sweetwater County, Wyoming. Of that land, 15,685.95 acres are Federal lands, 2,720 acres are State lands, and the remaining 20,363.73 acres are private.

Section 8 (a) of the Unit Agreement states that Plans of Development when approved by the authorized officer shall constitute the future drilling obligations of the Gas Operation. Large unit areas outside of the existing participating areas remain unexplored and undeveloped since formation of the unit in November 1942. Article 8 of the unit operating agreement allows the authorized representative (officer) of the Department of Interior to require certain wells be drilled. Your 1991 Plan of Development submission is therefore being returned for revision. A revised POD to reflect exploratory drilling should be submitted by June 1, 1991.

It is ordered pursuant to Article 8.1 of the unit operating agreement that the following number of wells be drilled within the unit outside of existing participating area [sic]:

1 well - 1991
1 well - 1992

Additional wells may be required in succeeding years until the unit area is fully explored.

In the event that no party elects to drill or that drilling required wells is discontinued prior to full exploration of the unit, the unit should be contracted pursuant to Article 8.3B of the unit operating agreement, to existing participating areas, effective the first day of the year following the year in which a drilling obligation required wells [sic] is not met. [Emphasis supplied.]

By letter filed April 22, 1991, Wexpro requested State Director Review of RSDO's Order, asserting that

[t]he decision purports to reject Wexpro's 1991 Plan of Development and to order the drilling of additional wells pursuant to authority given the authorized officer by Article 8 of the [SBB] Unit Operating Agreement. * * * The Department of the Interior is not a party to the Unit Operating Agreement. The referenced Article 8 merely explains what elections and participation the working interest owners shall have if the authorized officer requires the drilling of a well such as to prevent drainage. * * * Article 8, however, does not "allow" the authorized officer to require the drilling of additional wells. Such authority must be based on federal regulations or an agreement to which the Department of Interior is a party.

In his May 6, 1991, Decision, BLM's Deputy State Director (DSD) affirmed RSDO's Order to revise the 1991 POD to include exploratory drilling outside the existing PA's, stating that "there is justification for the authorized officer to request wells be drilled to continue exploration of the unit or in lieu of drilling, contract the SBBU to the existing

PA's." He based his conclusion on "the Act of August 21, 1935," 49 Stat. 674, 676-78, which he construed to provide "the direction for the [SBB Unit Agreement] in that lands should be contracted out of the unit area, and [made] available for leasing or development on a lease basis, if the lands are not being developed on a unit basis."

The DSD also cited section 8(b) of the SBB Unit Agreement, noting that it "states in part, that the plans of development submitted for approval by the authorized officer `shall provide for the exploration of each gas producing horizon or horizons for the determination of the commercially productive limits thereof in order that the maximum extent of each participating gas area may be fixed.'" The DSD noted his interpretation that, "if sufficient wells are not drilled to explore the unit area (i.e. the area has not been adequately explored and tested and proved nonproductive), the authorized officer may require wells to be drilled to accomplish such exploration."

The DSD also noted that section 8.1 of Article 8 of the SBB Unit Operating Agreement states in part that, "[f]or the purpose of this Article, a well shall be deemed a required well if the Drilling thereof is required by the final order of an authorized representative of the Department of Interior." (Unit Operating Agreement at 8.) The DSD held that the SBB Unit Operating Agreement, by referring to "required wells" in sections 8.3 and 8.4 of Article 8, recognizes the authorized officer's authority to issue an order requiring additional drilling. The DSD noted that section 8.4 of Article 8 provides that a "required well" can be drilled as an exploratory or development well, so that the drilling of "required wells" was not limited to situations requiring drainage protection. (Unit Operating Agreement at 9.)

Noting that the SBB Unit operator was given an opportunity to submit data to the authorized officer to allow him to evaluate whether the current PA's and other lands in the SBB Unit area have been fully developed, the DSD affirmed the RSDO's Order.

Wexpro appealed, characterizing the decision as "requiring contraction of [the SBB Unit] unless Wexpro agrees to drill additional wells under Wexpro's 1990 and 1991" POD. See SOR at 1. Wexpro resists BLM's order to revise the 1991 POD by noting that "[s]ubsequent drilling has not indicated that the boundaries established in the Unit Agreement do not correspond to the lands which actually participate in the production. * * * Further, the economics of the gas market have persuaded Wexpro that further drilling would not be prudent." See SOR at 2. Wexpro contends that BLM abused its authority in ordering it to drill exploratory wells or face contraction of the unit. See SOR at 15. Wexpro argues that none of the three sources of authority cited by BLM (the Act of August 21, 1935, the SBB Unit Agreement, or the SBB Unit Operating Agreement) empowers BLM to alter the boundaries of the SBB Unit. Wexpro asserts that BLM cannot enforce provisions of the SBB Unit Operating Agreement to compel action because it is not a party to the Agreement, and because the earlier SBB Unit Agreement does not provide for automatic contraction of the Unit's area. (SOR at 3, 8.) Wexpro further argues that neither the terms of the individual Federal

leases involved, the SBB Unit Agreement, nor the Mineral Leasing Act as it appeared in 1942 when the Unit was established empower BLM to contract the Unit. Wexpro finally asserts that BLM did not show that its POD was inadequate, arguing that the standard of adequacy should be judged by whether the outer economic limits of the PA's have been fully established, and claiming that it has shown that the boundaries of those lands which actually participate in production have been established.

The Bureau answers that the SBB Unit Agreement clearly contemplates further exploration and development of the Unit outside of the five PA's. It contends that it has an obligation as steward of the public interest to ensure that minerals under Federal lands will be sufficiently developed so that optimum recovery will be realized. According to BLM, Wexpro is obligated either to comply with public interest and policy through diligent development under the SBB Unit Agreement or to contract the SBB Unit boundaries. It argues that its order is also authorized by the Act of August 21, 1935, which mandates that the rights of all parties in interest, including the United States, be protected. It contends that the requirements imposed upon Wexpro in the SBB Unit Operating Agreement merely reinforce the principle found in the SBB Unit Agreement and the relevant statutes that Wexpro has an obligation to drill, and that Wexpro's arguments focusing on the SBB Unit Operating Agreement fail to establish that the Order was in error.

Wexpro replies, arguing that BLM has neither the express nor the implied authority to contract the Unit boundaries. In addition to reiterating its arguments in its SOR, Wexpro contends that BLM's reliance upon "the public interest" as an independent source of authority is misplaced.

[1] We consider whether BLM has authority to order Wexpro to drill wells in the SBB Unit outside the established PA's on pain of mandatory contraction of the Unit. Current Departmental regulations at 43 C.F.R. Subpart 3186 include model forms for a unit agreement, including language addressing the issues here. However, the SBB Unit Agreement was executed before model agreement forms were introduced by the Department in 1947. See 30 C.F.R. § 226.16 (1947). Therefore, we must look to the enabling legislation and the SBB Unit Agreement itself to determine BLM's authority and Wexpro's obligations.

The SBB Unit was established pursuant to the Act of March 4, 1931, 46 Stat. 1523, and the Act of August 21, 1935, 49 Stat. 674, which amended the Act of February 25, 1920, 41 Stat. 437. See Certificate of Approval signed by Abe Fortas, Undersecretary of the Interior, on October 27, 1942. The 1920 Act (known familiarly as the Mineral Leasing Act) made no reference to unitized operations. The 1931 Act did provide permanent authority to permit Unit plans embracing Federal lands (such authority having been temporarily granted by statute in 1930) and to modify individual lease requirements for Federal leases within an approved unit. The 1935 Act amended the Mineral Leasing Act to require such reasonable Unit plan as the

Secretary prescribed. See Law of Federal Oil and Gas Leases, § 18.02[1] (1991); Current Problems in Federal Unitization, 2 Rocky Mountain Mineral Law Institute 157 (1956).

The following provision from the 1935 Act provides the authority for BLM's actions here:

> The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases hereafter issued under any section of this Act be conditioned upon an agreement by the lessee to operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States: * * * Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under said plan.

49 Stat. 677-78. (Emphasis supplied.) In accordance with that provision, the SBB Unit Agreement in question here was required to include language vesting authority in the Secretary to amend the rate of prospecting and development.

In reviewing the SBB Unit Agreement, we find the following provision included to implement the above-mentioned authority:

> RATE OF PROSPECTING, DEVELOPMENT AND PRODUCTION
>
> 22. (1) All production and the disposal thereof shall be in conformity with allocations, allotments and quotas made or fixed by any duly authorized person or regulatory body under any Federal or State statute and the Secretary of the Interior is hereby vested with authority, pursuant to the acts of March 4, 1931 and August 21, 1935, supra, subject to the agreed minimums of subdivisions (2) and (3) of this Section, to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under this agreement, deemed by him to be proper in the public interest, the purpose thereof and the public interest to be served thereby to be stated in the order of alteration or modification.

(SBB Unit Agreement at 25.)

In addition, section 13 of the SBB Unit Agreement governs "Development and Operation on Land Outside Participating Areas," specifying that there

could be future drilling of "additional wells beyond the limits of the then established participating areas in determining the productive limits of any producing horizon in accordance with the terms of this agreement." (SBB Unit Agreement at 19, 21.) The SBB Unit Agreement further identifies a "power[] and dut[y]" to "enlarge any gas participating area and to create any new gas participating areas." (SBB Unit Agreement at 8, 9-10.) Such enlargement or creation of PA's would be accomplished using "knowledge gained in the drilling of wells." (SBB Unit Agreement at 8.)

Thus, Wexpro's assertion that the SBB Unit Agreement does not impart authority to BLM to require further exploratory drilling is without merit. As can be seen, the Secretary has broad statutory authority to prescribe actions which adequately protect the rights of all parties in interest, including the United States, by enforcing the terms of unit agreements. Further, section 8 of the SBB Unit Agreement plainly provides for the exercise of that authority via implementation and modification of POD's.

We also note that the Unit Operating Agreement, at section 8.3.B., expressly refers to "contraction" as an "alternative[] to drilling" a "required well," that is, a well that "is required by the final order of an authorized representative of the Department of the Interior." See section 8.1 of the Unit Operating Agreement). It provides: "If the Drilling of the [required] well may be avoided, without other penalty, by contraction of the Unit Area, Unit Operator shall make reasonable effort to effect such contraction with the approval of the Director." (Unit Operating Agreement at 9.) The import of that provision, read in concert with the other provisions of Article 8, is that if no party elects to drill an exploratory well as ordered by BLM, contraction of the unit may be mandatory. The language authorizes the Unit operator to agree to contraction in lieu of drilling a required well, 2/ and it is thus plain that the action BLM is mandating here is well within the authority granted by all lessees to the Unit operator.

Wexpro argues that RSDO did not show that the required wells are needed. Wexpro notes that the economics of exploratory drilling have persuaded it that drilling a well outside the PA's would not be prudent, presumably for economic reasons.

The SBB Unit Agreement provides that "[i]t is the intent of the parties hereto that development and operations upon lands in the Unit Area shall be coordinated to the extent necessary to achieve economy, efficiency, and the maximum economic recovery of oil, gas, and other hydrocarbon substances from such lands." (SBB Unit Agreement at 7 (emphasis supplied).) The Unit Agreement thus requires maximum economic recovery of oil, gas, and other hydrocarbon substances, where consistent with other named factors.

2/ Section 8.3.B. also authorizes the Unit operator to pay compensatory royalty in lieu of drilling a protective well. Those circumstances are not presented here.

The Bureau implicitly found, and the record strongly suggests, that development in the SBB Unit has not previously been "coordinated" to achieve "maximum economic recovery." Since the inception in 1942, only seven wells have been drilled outside of the five original PA's. Thus, on the average, only one well has been drilled every 7 years in all of the areas of the unit outside of the PA's. 3/ It does not appear that the terms of the SBB Unit Agreement are being satisfied under the current progress shown by Wexpro and the other Unit participants.

The Unit Agreement also implicitly requires drilling of exploratory wells, in that the enlargement or creation of PA's (as contemplated in section 13 of the SBB Unit Agreement) must be accomplished through "knowledge gained in the drilling of wells." (SBB Unit Agreement at 8.) Indeed, there is no way that such knowledge can be positively ascertained except by the drilling of exploratory wells.

The statute and the Unit Agreement provide BLM with adequate authority to issue an order to drill, provided (as discussed below) that an opportunity is provided to show that drilling would be uneconomic. Appellant has not shown that such action violates these provisions.

These oil and gas lands were presumably committed to the Unit Agreement in order to allow the unitized portion of the subject reservoir, owned by diverse parties, to be developed and operated with the greatest efficiency and maximum economic recovery. Commitment of the Federal oil and gas leases in question to the SBB Unit theoretically affords the individual lessee greater opportunity to participate in production without devoting excessive resources to develop individual wells. Section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1994), provides that an oil and gas lease committed to a unit plan shall continue in force as long as the lease remains committed, provided that production is had in paying quantities within the unit. Accordingly, as long as production is had in paying quantities on any lease committed to a unit agreement, that production will be credited to all of the leases so committed with respect to extending lease terms. Otherwise, the individual Federal leases would expire at the end of its lease terms in the absence of another well capable of producing oil or gas within the lease boundaries.

3/ With respect to the PA's, BLM also contends that development has not been diligent:

"[I]n 2 of the 5 PA's themselves, all of the wells producing from either the Frontier or Dakota Formations have now been plugged and abandoned, the last such well being plugged and abandoned some 5 years ago in 1986. See Affidavit at 2. Therefore, of the 5 original PA's, only 3 are currently producing unitized natural gas and associated products. In other words, not even considering the fact that the PA's have not been adequately explored or developed, the entire 39,769 acres of the SBBU are currently being held by less production than they were when the unit was initially established." (Answer at 8 n.6.)

In this instance, Federal leases encompassing lands outside the PA's have apparently been extended several decades beyond their original lease terms without the benefit of participation in a producing area or the foreseeable prospect that those lands will participate in production in the near future. Essentially, the lessees have apparently been able to hold these lands outside the PA's indefinitely without producing from them or evincing a plan that there will be production. This strongly suggests that development has not been "coordinated" to achieve "maximum economic recovery," and it is this situation that BLM apparently seeks to correct.

Wexpro discredits BLM's conclusion that drilling is necessary in this situation by contending that to do so would be too expensive at this time. The obligation to identify the boundaries of established and new PA's is not obviated by the fact that one party considers it too costly. Section 27 of the SBB Unit Agreement provides that "the obligations of the operators hereunder and the obligations of the parties hereto * * * shall be suspended to the extent that performance is prevented or rendered abnormally expensive or difficult * * * for any cause other than financial beyond the control of said operator." (SBB Unit Agreement at 29 (emphasis supplied).) This provision, coupled with the general requirement that only "maximum economic recovery" need be achieved, provide a basis for opening an inquiry into the economics of drilling in this case.

Up to this point, we are not aware that Wexpro has made any showing that performance would be "abnormally expensive" or recovery would be uneconomic. However, as pointed out by Judge Irwin, BLM did not give Wexpro a clear opportunity to present such data here. As this is an older lease, the applicability of the BLM Manual (apparently requiring an annual report in which any decision not to drill developmental wells must be fully justified) is uncertain. See Draft BLM Manual section 3180-1 H.2 (requiring an annual plan of development either providing for additional development drilling or fully justifying the lack of such drilling.) It is accordingly appropriate to set aside BLM's Decision and remand the matter to require Wexpro to provide information about the areas outside the PA's of the Unit, accompanied by its reasons why it would not be economically prudent to drill exploratory wells outside the PA's. Any subsequent BLM decision concluding that exploratory drilling is justified would be subject to appeal.

The Department, as the steward of the public's financial interest in Federally owned minerals, has an obligation to ensure that those minerals will be efficiently developed so that optimum recovery will be realized. See Chevron USA Inc., 111 IBLA 96, 103 (1989). The Bureau has reviewed the history of this Unit and determined sufficient reasons exist to order further exploration. That history demonstrates an adequate basis to affirm an order to drill, unless Wexpro can establish that drilling would be so costly as to render additional recovery uneconomic, and thus beyond the scope of the "maximum economic recovery" required by the Unit Agreement. Otherwise, the Unit participants would be able to indefinitely hold onto Federal lands outside the PA's despite the lack of diligent exploration

in those areas. If the current lessees do not justify their failure to develop the leases, they should be released via contraction of the Unit to allow other parties the opportunity to do so.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision is set aside and case remanded for further action.

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David L. Hughes
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

In June 1989 Robert Chase, who was Chief, Branch of Fluids, Mineral Resources, in the Rock Springs District Office, Bureau of Land Management (BLM), wrote to Wexpro Company, operator of the South Baxter Basin Unit. During its review of Wexpro's 1989 plan of development for the unit BLM noted only two wells had been drilled in the unit during the past 15 years, Chase stated. Citing section 9(e) of the Unit Agreement, Chase concluded: "Since the unit operator is not fulfilling the drilling/exploration requirements of the unit agreement, the unit operator should request contraction of the unit to the existing participating areas (PA)."

In its August 1, 1989, response Wexpro advised Chase that the working interest owners had been given his June 1989 letter and asked to inform Wexpro of any plans they might have for the unit. "Wexpro is also reviewing the geology and its plans for the unit," Wexpro stated, "[and] would anticipate that such plans will be reflected in the 1990 Plan of Development." 1/

Wexpro's 1990 plan of development did not include any exploration or development, so Chase wrote an April 1990 memorandum to the Wyoming State Director, BLM, entitled "Units with No Automatic Contraction Clause - Section (e)":

> A number of the older unit agreements did not contain an "automatic contraction" provision such as Section 2(e) of the present model agreement. [2/] South Baxter Basin is such a unit.
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> * * * * * * *
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> Previous Federal supervisors of unit operation have tried to find a handle to accomplish (force) contraction other than "voluntary contraction", and have failed. This memo and request

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1/ Wexpro's response also pointed out that section 9 of the Unit Agreement concerns plans for development of oil and was not applicable because the South Baxter Basin Unit only produces gas.

2/ "Because of the large areas included in proposed units the United States Geological Survey has in recent years required the addition of various types of automatic elimination clauses in unit agreements. This clause is usually inserted as paragraph (e) of Section 2 of the prescribed form of unit agreement. Briefly, the clause provides for automatic elimination of certain lands in the unit area upon a certain date if prescribed development operations are not then being carried forward." Ryan, "Current Problems in Federal Unitization, With Particular Reference to Unit Operating Agreements," 2 Rocky Mountain Mineral Law Institute 157, 160-61 (1956). See 43 C.F.R. Subpart 3186.

for assistance represents another such attempt to find the means to bring about contraction of such units.

* * * * * * *

I realize that the Federal government is not a party to the Unit Operating Agreement. However, Article 8.1, Required Wells, states ". . . . a well shall be deemed a required well if the drilling thereof is required by the final order of an authorized representative of the Department of [the] Interior." Article 8.3.B gives the alternative of unit contraction if required wells are not drilled.

It seems to me, if there is designation of required wells by the Department of [the] Interior in Article 8 of the Unit Operating Agreement, there must be something in the Unit Agreement to give the representative of the Department of [the] Interior that authority in the Unit Operating Agreement of which the Department is not a party.

Section 8(b) of the Unit Agreement requires that Plans of Development shall be filed with the Federal Oil and Gas Supervisor and "(b) shall provide for the exploration of each gas producing horizon or horizons for determination of commercially productive limits thereof in order that the maximum extent of each participating gas area may be fixed." It is my opinion that it is inferred [sic] that if sufficient wells are not being drilled to explore the unit for gas, in the judgement of the Federal Oil and Gas Supervisor (Authorized Office), the Authorized Officer may require wells to be drilled to accomplish such exploration. [S]uch inference would tie Section 8 of the Unit Agreement to Article 8 of the Unit Operating Agreement.

It is requested that the State Office give an opinion or request an opinion from the solicitors whether we could use a combination of Section 8 of the Unit Agreement and Article 8 of the Unit Operating Agreement to have wells drilled to properly explore the unit or in lieu of drilling wells, contract the unit to existing PA's.

Robert Bennett, Deputy State Director, Mineral Resources, responded to Chase in Instruction Memorandum No. WY-90-407, dated May 30, 1990, agreeing with Chase's interpretation of section 8(b) of the Unit Agreement. Bennett based his belief that BLM has the authority "to request wells be drilled to continue exploration of the unit or in lieu of drilling contract the [unit] to the existing PA's" on the language of the Act of August 21, 1935. 3/

3/ "The Secretary of the Interior, for the purpose of more properly conserving the oil or gas resources of any area, field, or pool, may require that leases hereafter issued under any section of this Act be conditioned

"The unit operator should be given an opportunity to submit information or data for the AO [authorized officer] to evaluate whether the current PA's and other lands in the [unit] area have been fully developed," Bennett advised.

Chase did not provide Wexpro that opportunity, however. Nor did he ask for the results of Wexpro's review of the geology of the area. Instead, when Wexpro's proposed 1991 plan of development again showed no additional exploration or development, Chase ordered Wexpro to drill two wells in the unit outside of the existing PA's, one in 1991 and one in 1992, and stated that additional wells "may be required in succeeding years until the unit area is fully explored." 4/

Chase's March 29, 1991, letter stated that Wexpro could seek State Director review under 43 C.F.R. § 3165.3(b), and Wexpro did. Surprisingly, that review was conducted by Bennett. Not surprisingly, Bennett affirmed Chase's March 29, 1991, letter. Bennett's May 6, 1991, Decision relied on the language of the Act of August 21, 1935, and Chase's interpretation of Section 8(b) of the Unit Agreement that Bennett had previously approved in his May 1990 Instruction Memorandum. 5/

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fn. 3 (continued)
upon an agreement by the lessee to operate, under such reasonable cooperative or unit plan for the development and operation of any such area, field, or pool as said Secretary may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States: Any cooperative or unit plan of development and operation, which includes lands owned by the United States, shall contain a provision whereby authority, limited as therein provided, is vested in the Secretary of the department or departments having jurisdiction over such land to alter or modify from time to time in his discretion the rate of prospecting and development and the quantity and rate of production under such plan." 49 Stat. 677-78. For the current version of this provision, see 30 U.S.C. § 226(m) (1994).

4/ "In the event that no party elects to drill or that drilling required wells is discontinued prior to full exploration of the unit, the unit should be contracted pursuant to Article 8.3B of the unit operating agreement, to existing participating areas, effective the first day of the year following the year in which a drilling obligation required wells [sic] is not met," Chase concluded. (Letter of Mar. 29, 1991, from Chase to Wexpro concerning the South Baxter Basin Unit.)

5/ Even when State Director review is conducted by someone in BLM who was not directly involved in the previous decision it cannot be regarded as the objective administrative review envisioned by the Public Land Law Review Commission (see One Third of the Nation's Land, Washington, DC, June 1970, at 254-55), and the Congress in 43 U.S.C. § 1701(a)(5) (1994). Therefore, the regulations provide that any party adversely affected by the decision of the State Director after State Director review may appeal that decision to this Board. See 43 C.F.R. § 3165.4(a).

Bennett's Decision stated that Chase's letter "indicated [Wexpro] has been given an opportunity to submit information or data for the AO to evaluate whether the current PA's and other lands in the [unit] area have been fully developed." As stated above, apart from waiting for Wexpro's 1991 proposed plan of development BLM provided no opportunity to provide information or data. And from the record before us it appears BLM conducted no evaluation beyond concluding that drilling only two wells in the last 15 years was inadequate.

I do not have serious reservations about BLM's authority under the language of the Act of August 21, 1935, supra, note 3, and section 22 of the Unit Agreement to require exploratory drilling. 6/ But, in my view, it cannot exercise that authority without requesting data about the commercially productive limits of gas producing horizons and evaluating whether it is reasonable to require exploration outside the PA's based on that data and any other relevant information it can gather. Without such an evaluation BLM cannot know whether the unit is being developed in accordance with the purposes stated in the Unit Agreement, i.e., "to promote economical and efficient development, [and] the maximum economic recovery of oil, gas and associated fluid hydrocarbon substances that may be produced from [the] Unit Area without avoidable waste * * *." Drilling exploratory wells is expensive business, and before BLM requires one a year for 2 years and an indefinite number thereafter, it must have a reasoned basis for doing so. See Great Western Onshore, 133 IBLA 386, 397 (1995), and cases cited.

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Will A. Irwin
Administrative Judge

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6/ Section 22(1) of the Unit Agreement states
"the Secretary of the Interior is hereby vested with authority, pursuant to the acts of March 4, 1931 and August 21, 1935, supra, * * * to alter or modify from time to time in his discretion, the rate of prospecting and development * * * deemed by him to be proper in the public interest, the purpose thereof and the public interest to be served thereby to be stated in the order of alteration or modification."